Calendar No. 559

98TH CONGRESS *1st Session*	SENATE	REPORT No. 98-308

MISCELLANEOUS TARIFF, TRADE, AND CUSTOMS MATTERS

NOVEMBER 10 (legislative day, NOVEMBER 7), 1983.—Ordered to be printed

Mr. DOLE, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 3398]

The Committee on Finance, to which was referred the bill (H.R. 3398) to change the tariff treatment with respect to certain articles, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

I. SUMMARY

H.R. 3398, as referred to the Committee, was ordered favorably reported with amendments that (1) replace all but two sections with equivalent language, and (2) include new miscellaneous tariff, trade, customs, and related matters. Title I of H.R. 3398, as amended, contains permanent and temporary changes to the Tariff Schedules of the United States. Title II contains miscellaneous changes to the customs laws, including authority for the Secretary of Commerce and the Secretary of the Treasury to enforce an agreement with the European Communities relating to imports of steel pipes and tubes. ~~Title III c~~ontains amendments to the Internal Revenue Code related to certain trade problems.

III Finally, Title ~~IV~~ contains the provisions of S. 144, (the International Trade and Investment Act), as slightly amended.

The following is a summary of H.R. 3398, as amended:

TITLE I, SUBTITLE B

(1) Coated fabrics.—Section 111 would provide for the reclassification of certain fabrics, articles, and materials, coated, filled, or

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and tube sector, then the two sides would consult and if after 60 days no solution has been found, would take complementary measures "within their legislative and regulatory framework" to prevent diversion. The agreement provides that its terms do not apply if persons in the United States file petitions that "threaten to impair the attainment of the objectives of this arrangement," thereby to some extent chilling the filing of subsequent countervailing duty and antidumping cases.

The Committee held a hearing in September 1983 on S. 1035, a bill intended to correct such violations of the side Commerce to restrain the importation of pipe and tub articles from the EC in excess of certain percentages of apparent domestic consumption based upon the base period of the interntional agreement. One such type of pipe and tube would have been oil country tubular goods (OCTG), a product that is, by virtue of the fact it has a high value added, a tempting article for the diversion the pipe and tube arrangement was intended to prevent.

Statistics made available to the Committee on imports, which are collected by subcategories of pipe and tube, including OCTG, indicate that this year so far, imports of OCTG account for 20.3 percent of the U.S. market, whereas the average market share during the 1979-1981 base period was only 8.76 percent. And it is now clear that imports from the EC will also exceed the overall 5.9 percent limitation. It, therefore, appears that exports from the EC will not be consistent with the terms of the October 1982 arrangement, and that in any event, imports of OCTG have risen out of all proportion to other pipe and tube covered by the arrangement to the disadvantage of U.S. producers of these products.

Therefore, the Committee amended the bill to add a provision similar to S. 1035. This provision would require that the Secretary enter into consultations with the EC on the subject of the arrangement and if those consultations have not resulted in an agreement which the Secretary determines will result in compliance with the arrangement, then he is authorized to take action to control imports of the product by reference to product categories he develops, taking account of the average annual share of annual U.S. consumption accounted for by EC articles within each such category during the historical period specified in the arrangement. It is intended that OCTG could be one such category. This provision of law is essentially the same as the provisions of Public Law 97-276. The Committee is hopeful that this legislation will allow consultations between the United States and the EC to resolve the problems described above. However, should the consultations fail to produce that result, the Committee intends that the Administration utilize the authorities provided in this legislation to insure that the original understanding is observed.

SECTION 214—PRECLUSION OF STATE AND LOCAL TAXATION OF PERSONAL PROPERTY IN FOREIGN TRADE ZONES

Current law.—In general, merchandise may be brought into a foreign trade zone without being subject to the customs laws of the United States (the Foreign Trade Zones Act of 1934, 19 U.S. Code sec. 81a et seq.). Merchandise may generally be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise or otherwise manipulated in a foreign trade zone, or be manufactured in a foreign trade zone, without being subject to U.S. customs laws, and it may then be exported or destroyed without being subject to U.S. customs laws. This exemption does not apply to machinery and equipment that is imported for use (for manufacturing or the like) within a foreign trade zone.

When foreign merchandise moves from a foreign trade zone into customs territory of the United States it is subject to the laws and regulations of the United States affecting imported merchandise. At the point, U.S. import duties apply.

A similar deferral of U.S. import duties applies to goods stored in government supervised bonded customs warehouses, which are generally treated as being outside U.S. customs territory. Only if goods are withdrawn for domestic sale of stored beyond a prescribed period does any duty become due. The Supreme Court of the United States has ruled that Congress's comprehensive regulation of customs duties preempts state property taxes on goods stored under bond in a customs warehouse (*Xerox Corp.* v. *County of Harris, Texas, and City of Houston, Texas*, No. 81-1489, December 13, 1982).

The bill.—Section 214 would amend section 15 of the Foreign Trade Zones Act of 1934 to make it clear that tangible personal property imported from outside the United States and held in a foreign trade zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, would be exempt from State and local ad valorem taxation . . The bill would preempt State law of local law imposing ad valorem taxation on such property.

As for imported goods, the benefits of the bill would apply only to goods in a foreign trade zone for bona fide customs reasons. That is, it would not apply to property imported into the United States for use in manufacturing within a foreign trade zone (rather than for sale). Moreover, the Foreign Trade Zone Act of 1934 does not apply to machinery and equipment within a zone for use therein, so the benefits of the bill would not extend to those items whatever their origin.

As for U.S.-produced property, the benefits of the bill would apply only if the property were held in the zone for exportation. The benefits would not apply to U.S.-produced property that was present in the zone for combination with imported property or for other processing if the U.S.-produced property were destined for later use in or sale into the United States. By contract, the benefits would apply to U.S.-produced property that was present in the zone for combination with imported property or for other processing if the U.S.-produced property were destined for later use or sale outside the United States.

Reason for provision.—Local taxing jurisdictions in Texas may seek to declare exemptions for property taxes on some tangible personal property stored in foreign trade zones, but are precluded from doing so by the Texas Constitution. The local foreign trade zones thus are disadvantaged in promoting the benefits of zones in their localities. The committee is unaware of any states or localities outside the State of Texas that seek to impose property taxes on tangible personnel property located in foreign trade zones for bona fide customs reasons, or have a bar similar to that in Texas that would preclude localities from declaring an exemption to such a tax.

SECTION 215—DENIAL OF FEDERAL TAX DEDUCTIONS FOR ADVERTISING CARRIED BY CERTAIN FOREIGN BROADCASTERS

Current law

Deductibility of advertising expenses.—Under current law, taxpayers may generally deduct, in computing their Federal icome tax, all ordinary and necessary expenses paid or incurred in carrying on any trade or business. The reasonable cost of advertising, whether paid to a domestic or foreign entity, generally qualifies as a deductible ordinary and necessary business expense under Code section 162.

Tax results dependent on the identity of a particular foreign country involved.—Under current law, the income tax consequences of a transaction involving a foreign country ordinarily do not depend on the particular foreign country involved. However, the Internal Revenue Code [1] provides in a number of cases for more burdensome income tax treatment for foreign-related transactions on the basis of the laws or policies of the particular foreign country involved. These rules have the effect of adversely affecting taxpayers from a particular foreign country or of discouraging U.S. taxpayers from dealing with a particular foreign country or its persons.[2]

Several specific Code sections allow higher taxation of foreign taxpayers from offending countries. For example, there are two alternative remedies that the President may invoke against taxpayers from a foreign country that taxes United States persons more heavily than its own citizens and corporations. When the President makes a finding that a foreign country's tax system discriminates against U.S. persons, he is to double the applicable U.S. tax rate on citizens and corporations of that foreign country (sec. 891). Alternatively, upon a finding of intransigent discrimination against U.S. citizens and corporations, the President is to raise U.S. tax rates on citizens, residents, and corporations of the discriminating foreign country substantially to match the discriminatory foreign rate if he finds such an increase to be in the public interest (sec. 896). In ad-

[1] In addition to the Code provisions discussed in the text, the bilateral tax treaties to which the United States is a party alter Federal tax rules for transactions involving the United States and the treaty partner in varying degrees. For instance, absent a treaty, interest paid by a U.S. borrower is ordinarily subject to a 30 percent withholding tax if the interest income is not effectively connected with a U.S. trade or business of the lender. Some treaties reduce this rate below 30 percent, while some treaties eliminate the tax altogether.

[2] By contract, some tax rules favor dealings with specific countries. For example, convention expenses incurred in Canada or Mexico receive more favorable treatment than similar expenses incurred in other foreign countries, and convention expenses incurred in certain Caribbean Basin countries are eligible for more favorable treatment in certain cases (sec. 274). In addition, certain corporations formed under the laws of Canada or Mexico will, if the U.S. parent elects, be permitted to join in the U.S. consolidated return of their parent companies (sec. 1504(a)). Moreover, a mutual life insurance company with branches in Canada or Mexico may elect to defer taxation on income of those branches until its repatriation (sec. 819A).

98TH CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT No. 98-267

MISCELLANEOUS TARIFF AND CUSTOMS PROVISIONS

JUNE 24, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 3398]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3398) to change the tariff treatment with respect to certain articles, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY OF PROVISIONS

H.R. 3398 is a bill which incorporates 23 noncontroversial tariff and trade bills, approved by the Committee on Ways and Means. They involve permanent duty free entry, temporary duty reductions, temporary suspension of duties, certain classification changes, and for other purposes. The Committee has combined these bills into a single omnibus bill to facilitate their consideration by the House of Representatives.

Section 101 applies to all other sections of the bill. It states that whenever an amendment or repeal is expressed in terms of an amendment to, or repeal of, a schedule, item, headnote or other provision, the reference shall be considered to be made to a schedule, item, headnote, or other provision of the Tariff Schedules of the United States (19 U.S.C. 1202).

Section 111 contains a provision introduced by Mr. Shannon, H.R. 1910, to provide for the reclassification of certain fabrics, articles and materials, coated, filled or laminated with rubber or plastics, currently being imported under schedule 7 (specified Products; miscellaneous and nonenumerated products). These items would be reclassified under the appropriate section in schedule 3 (Textiles).

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	Quantity (thousands)	Value (thousands)
1978	73	$3,237
1979	52	3,440
1980	92	5,326
1981	91	5,934
1982	50	3,690

The data illustrate that exports of bicycles have not been important for the bicycle industry. Thus, the provision in the proposed legislation which attempts to restrict operations in a foreign trade zone or subzones to making finished bicycles or reexporting parts would appear to have little partical application.

In 1982 the total consumption of bicycle component parts was $172 million and the total U.S. consumption on complete bicycles was 6.8 million units valued at $579 million.

Most bicycle component parts, when imported separately, are classified as "parts of bicycles" under TSUS items 732.30 through 732.42 of part 5C of schedule 7. Other parts, however, are classified in accordance with general headnote 10(ij), under more specific provisions elsewhere in the TSUS. A ruling by the Customs Service, C.I.E. 575/57, March 11, 1957, makes a distinction between two groups of parts.

The two most important TSUS items for complete bicycles are 732.12 with a duty of 11 percent ad valorem and 732.18 with a duty of 5.5 percent ad valorem under which 30 percent and 57 percent, respectively, of U.S. imports entered in 1982. For item numbers followed by staged duty reductions, an LDDC rate of duty equivalent to the 1987 duty is now in effect. Certain items are designated as articles eligible for duty-free entry under the Generalized System of Preferences.

PARAGRAPH (b)—EXEMPTION FROM STATE AND LOCAL AD VALOREM TAXES

(Originally introduced as H.R. 717 by Mr. Wright)

Section 211, paragraph (b), would amend section 15 of the Foreign Trade Zones Act of 1934, to exempt from State and local ad valorem taxation tangible personal property imported from outside the United States and tangible personal property produced in the United States and held in a zone for exportation.

The goal of this legislation is to affirm the original purpose of FTZs (to expedite and encourage foreign commerce) and to confirm that Congress intended not to permit the imposition of such taxes. The new subsection is designed to insure that FTZs would be uniformly treated by non-Federal taxing authorities. In addition, the amendment would eliminate such tax concerns from among the factors to be considered by potential FTZ operators or users when deciding where an operation of FTZ is to be located.

Further, the bill was introduced due to a unique problem in the State of Texas in which the local taxing jurisdiction does not have the authority to exempt tangible personal property in a FTZ from taxation due to the State constitution. The State of Texas' constitution specifically provides for certain articles to be exempt from taxation. No other items can be exempted without a change in the Constitution. It is expected that Federal law would preempt State law in this case.

It is the intention of this legislation that the following considerations would be applied when implementing this legislation:

(1) Bona fide customs use of Foreign Trade Zone.—Based upon the practice followed in states already granting this exemption, by interpretation, the benefits would apply only to goods in the zone for bona fide customs reasons.

(2) Machinery and Equipment.—Since the Foreign Trade Zone Act of 1934 does not apply to machinery and equipment within a zone for use therein the benefits of the bill would not extend to such items.

The FTZs were intended by Congress to be special instrumentalities which would stimulate and facilitate foreign commerce and which would not be considered as part of the United States for customs purposes. The zones are unique and limited federally-created entities; while the States provide services to the zones, State taxing authority should be viewed in the context of Federal statutes and regulations and of the Constitution, as well as the overall framework of State-Federal relations.

It would appear that the principal type of tax which would be proscribed by the legislation is a personal property tax, one levied on goods held by the potential taxpayer on a given date, especially articles used in commerce or inventoried for future sale. Absent this legislation, such a tax could be arguably assessed on merchandise or materials located or being stored in a FTZ, even if the materials or articles were intended for export to countries other than the United States. This form of tax is generally aimed at raising revenue for the taxing authority, rather than at controlling the use of the property; however, the cost of paying a property tax might be passed along to consumers, raising the price of the merchandise. Thus, the tax might have the effect of a duty when imposed on FTZ property, which might be imported into this country, and impinge upon the Congress' exercise of its Article I authority. While not every State tax will be found on review to be a prohibited impost or duty, and while a State may not be discriminating in assessing the tax on all articles in its geographical territory regardless of origin, such a tax may constitute a burden on foreign and interstate commerce, in light of the subject of the tax.

Section 212. Pipe Organ

(Originally introduced as H.R. 1423 by Mr. Badham)

Section 212 would provide for the duty free entry of a pipe organ which would be permitted to be free of duty as of the date of such entry. All duties which had been liquidated on this entry would be reliquidated and the appropriate refund paid.

The organ for the Crystal Cathedral of Garden Grove, California, was imported, in parts, in six separate shipments. At the time this import was made, and continuing to the present time, the tariff schedules provide for the duty-free entry of a complete organ.